

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

RUBEN GUTIERREZ, :  
Plaintiff, :  
CIVIL ACTION NO. 1:19-CV-00185  
v. :  
DEATH PENALTY CASE  
LUIS V. SAENZ, et al :  
Defendants :  
Respondent. :  
-----:  
:

## **MOTION FOR ISSUANCE AND SERVICE OF SUMMONS**

Ruben Gutierrez, through undersigned counsel, hereby requests the issuance and service of a summons upon defendant Luis V. Saenz, Cameron County District Attorney, and states as follows:

On September 26, 2019, Mr. Gutierrez filed a complaint in this matter, naming five defendants:

Bryan Collier, Executive Director, Texas Department of Criminal Justice

Lorie Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division

Billy Lewis, Warden, Texas Department of Criminal Justice, Huntsville Unit

Luis V. Saenz, Cameron County District Attorney

Felix Saucedo, Jr., Chief, Brownsville Police Department

*See* ECF No. 1.

With the exception of Luis Saenz, all defendants have waived service of a summons pursuant to Federal Rule of Civil Procedure 4(d). *See* ECF Nos. 6, 8, 9, 10.

Federal Rule of Civil Procedure 4(c) requires Mr. Gutierrez as plaintiff to serve Mr.

Saenz with a summons. On September 30, undersigned counsel requested that Mr. Saenz waive service of a summons in this case. The same day, Assistant District Attorney Edward Sandoval informed undersigned counsel that Mr. Saenz would not agree to waive service. On October 1, 2019 undersigned counsel requested Mr. Saenz reconsider, but Mr. Sandoval indicated he would not. Thus, service of a summons is necessary.

Petitioner is indigent; his motion to proceed *in forma pauperis* is currently pending before this court. *See* ECF No. 7. Petitioner is financially unable to pay for fees for service of a summons. Petitioner requests that this Court order the clerk to issue a summons to Luis V. Saenz and order the United States Marshals to serve this summons. *See* Fed. R. Civ. Pro. 4(c)(3) (“At the plaintiff’s request, the court may order that service be made by a United States marshal.... The court must so order if the plaintiff is authorized to proceed in forma pauperis...”).

Respectfully Submitted,

/s/ Peter Walker  
Peter Walker  
Assistant Federal Defender  
Federal Community Defender for the  
Eastern District of Pennsylvania  
Suite 545 West, The Curtis Center  
601 Walnut Street  
Philadelphia, PA 19106  
(215) 928-0520  
[peter\\_walker@fd.org](mailto:peter_walker@fd.org)

/s/ Richard W. Rogers, III  
Richard W. Rogers, III  
3636 S. Alameda St., Ste. B 191  
Corpus Christi, TX 78411  
(361) 888-7620  
[rwrogersiii@aol.com](mailto:rwrogersiii@aol.com)

Dated: October 7, 2019

Counsel for the Plaintiff

**CERTIFICATE OF CONFERENCE**

I hereby certify that I have conferred with counsel for the defendants regarding this motion. Assistant Attorney General Jay Clendenin, counsel for Defendants Collier, Davis, and Lewis, indicated his clients take no position on the motion. Counsel for Defendant Saucedo, Alfredo Padilla, Deputy City Attorney for the City of Brownsville, indicated he does not oppose the motion. Cameron County Administrative First Assistant District Attorney Edward Sandoval indicated Defendant Saenz does not oppose the motion.

Dated: October 7, 2019

/s/ Peter Walker

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I served the foregoing pleading and the attachments thereto on the following person by ECF filing:

Jefferson David Clendenin  
Edward Larry Marshall  
Assistant Attorneys General  
Office of the Attorney General of Texas  
Post Office Box 12548  
Austin, Texas 78711-2548

I further hereby certify that on this date, I served the foregoing pleading and attachments thereto on the following people via first class mail:

Luis V. Saenz  
Cameron County District Attorney  
964 E. Harrison Street, Fourth Floor  
Brownsville, Texas 78520

Alfredo Padilla  
Deputy City Attorney  
City of Brownsville Legal Department  
1001 E. Elizabeth Street, Floor 2  
Brownsville, Texas 78520

/s/ Peter Walker  
Peter Walker

Dated: October 7, 2019